



YSFG AGREEMENT

Department/Division: Natural Resources and Parks / Parks and Recreation Division

Agency: North Bend

Project Title: Torguson Park Pump Track

Amount: \$ 75,000 Project: 1131261 Contract: 5917144

Term Period: January 1, 2017 To December 31, 2018

THIS CONTRACT is entered into by KING COUNTY (the "County"), and North Bend (the "Agency"), whose address is 126 E 4th St., North Bend, WA 98045,

WHEREAS, the Agency is either a public agency or a non-profit organization whose land or facility will provide recreational or athletic opportunities primarily to youth under 21 years of age;

WHEREAS, King County has selected the identified Agency to be awarded a Youth Sports Facilities Grant to assist in capital improvements for increased recreational opportunities;

WHEREAS, the Agency and/or landowner whose property will receive these improvements will develop, program, operate, and maintain the facility to address a recreation need in King County; and

WHEREAS, King County is authorized to administers the Youth Sports Facilities Grant (YSFG) and enter into agreements for the use of King County funds by public agencies and/or not-for-profit organizations to provide a service to the public under King County Ordinance 10454;

NOW THEREFORE, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

1. SCOPE OF SERVICES

The Agency shall provide services and comply with the requirements set forth hereinafter and in the following attached exhibits, which are incorporated herein by reference:

<input checked="" type="checkbox"/>	Scope of Services	Attached hereto as Exhibit I
<input checked="" type="checkbox"/>	Budget	Attached hereto as Exhibit II
<input checked="" type="checkbox"/>	Invoice Voucher	Attached hereto as Exhibit III
<input checked="" type="checkbox"/>	Reporting	Attached hereto as Exhibit IV
<input checked="" type="checkbox"/>	Design Documents	Attached hereto as Exhibit V
<input checked="" type="checkbox"/>	Insurance Certificate	Attached hereto as Exhibit VI
<input checked="" type="checkbox"/>	W-9	Attached hereto as Exhibit VII

2. TERM OF CONTRACT

This Agreement shall commence on January 1, 2017, and shall expire on the December 31, 2018, unless extended or earlier terminated, pursuant to the terms and conditions of this Agreement.

3. PREMISES

This grant project is located at: Torguson Park, North Bend

Commonly known as {Torguson Park, North Bend}, and referred to herein as "the Premises."

4. PARTIES

All communication, notices, coordination, and other tenets of this Agreement shall be managed by:

On behalf of County:

Butch Lovelace, YSFG Program Manager
King County Parks and Recreation Division
201 South Jackson Street, Suite 700
Seattle, WA 98104-3855

Email: butch.lovelace@kingcounty.gov
Phone: 206.477.4577

On behalf of Agency:

Lynn Hyde
North Bend
126 E 4th St.
North Bend, WA 98045

425-888-7646
lhyde@northbendwa.gov

5. COMPENSATION AND METHOD OF PAYMENT

- A. The County shall reimburse the Agency for satisfactory completion of the services and requirements specified in this Agreement after the Agency submits an invoice and all accompanying reports as specified in the attached exhibits. The County will initiate authorization for payment after approval of corrected invoices and reports. The County shall make payment to the Agency not more than thirty (30) days after a complete and accurate invoice is received.
- B. The Agency shall submit its final invoice and all outstanding reports within fifteen (15) days of the date this Agreement expires or is terminated. If the Agency's final invoice and reports are not submitted by the day specified in this subsection, the County will be relieved of all liability for payment to the Agency of the amounts set forth in said invoice or any subsequent invoice.

6. OPERATING BUDGET

When a budget is attached hereto as Exhibit II, the Agency shall apply the funds received from the County under this Agreement in accordance with said budget. If, at any time during the Term of this Agreement, the Agency expects that the cumulative amount of transfers among the budget categories, i.e. Project Tasks, may exceed ten percent (10%) of the Agreement amount, then the Agency shall request an amendment to this Agreement. Supporting documents necessary to explain fully the nature and purpose of the amendment must accompany each request for an amendment. County approval of any such amendment shall not be unreasonably withheld.

7. COMMUNICATION

The Agency shall recognize King County Parks as a fiscal sponsor for the grant project in the following manner:

- A. Plaque: At the time of project completion or dedication, whichever comes first, the Agency shall install on or near the facility a plaque provided by the County that notes King County as a fiscal sponsor.
- B. Events: The Agency shall invite and recognize King County Parks at all events promoting the project during construction, and at the final project dedication.
- C. Community relations: The Agency shall recognize King County Parks as a fiscal sponsor in all social media, websites, brochures, banners, posters, press releases, and other promotional material related to the Project.

8. PRIORITY OF USE; PUBLIC ACCESS; SCHEDULING

These funds are provided for the purpose of developing, renovating or repairing sports facilities primarily serving persons under 21 years of age in low and moderate income communities within King County. The Agency shall give priority of use to persons under the age of twenty-one. Fees for use of the project shall be no greater than those generally charged by public operators of similar facilities in King County.

Notwithstanding temporary closure for required maintenance or repairs, the minimum period of time the Agency must ensure the facility is available for use is set forth in the table below. If the facility is retired or otherwise removed from use before the end of the specified period, then the Agency shall reimburse the County's funding on a pro rata basis, determined by dividing the number of years of lost public use by the total years of required dedication, multiplied by the total County grant amount. By way of example only, if the County makes a \$10,000 grant to Agency X, then the Agency's project must be dedicated to public use including priority of use by youth for a minimum of 5 years. If Agency X eliminates public access to the project after 3 years, such that 2 years of public access and youth priority are lost, then Agency X must repay the County $\$4,000$ ($2/5 * 10,000 = \$4,000$).

Grant Amount	Required Public Use & Youth Priority (in years)
\$14,999	Five (5)
\$15,000 – \$29,999	Eight (8)
\$30,000 – \$49,999	Twelve (12)
\$50,000 – \$75,000	Fifteen (15)

If the completed project is subject to scheduling or reservation for use, then the Agency shall post the use schedule and the Agency's scheduling or reservation policies, practices, and information in a highly visible location near the project and/or on their website; and the Agency shall permit the public to schedule or reserve use of the completed project consistent with the requirements of this Section. **The Agency's duties under this Section will survive the expiration or earlier termination of this Agreement.**

9. GREEN BUILDING AND SUSTAINABLE DEVELOPMENT

King County is committed to promoting and using green building practices in construction projects. Though not required, King County strongly encourages practices that conserve resources, use recycled content materials, maximize energy efficiency, and otherwise consider environmental, economic and social benefits in the design and construction of a building project.

10. INTERNAL CONTROL AND ACCOUNTING SYSTEM

The Agency shall establish and maintain a system of accounting and internal controls which complies with applicable, generally accepted accounting principles, and governmental accounting and financial reporting standards in accordance with Revised Code of Washington (RCW) Chapter 40.14.

11. MAINTENANCE OF RECORDS

- A. The Agency shall maintain accounts and records, including personnel, property, financial, and programmatic records and other such records as may be deemed necessary by the County to ensure proper accounting for all Agreement funds and compliance with this Agreement.
- B. These records shall be maintained for a period of six (6) years after the expiration or earlier termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14.
- C. The Agency shall inform the County in writing of the location, if different from the Agency address listed on page one of this Agreement, of the aforesaid books, records, documents, and other evidence and shall notify the County in writing of any changes in location within ten (10) working days of any such relocation.

12. RIGHT TO INSPECT

King County reserves the right to review and approve the performance of Agency with regard to this Agreement, and, at its sole discretion, to inspect or audit the Agency's records regarding this Agreement and the Project upon reasonable notice during normal business hours.

13. COMPLIANCE WITH ALL LAWS AND REGULATIONS

The Agency, in cooperation and agreement with the owners of the Premises, shall comply with all applicable laws, ordinances and regulations in using funds provided by the County, including, without limitation, those relating to providing a safe working environment to employees and, specifically, the requirements of the Washington Industrial Safety and Health Act (WISHA); and, to the extent applicable, those related to "public works," payment of prevailing wages, and competitive bidding of contracts. The Agency specifically agrees to comply and pay all costs associated with achieving such compliance without notice from King

County; and further agrees that King County, does not waive this Section by giving notice of demand for compliance in any instance. The Agency shall indemnify and defend the County should it be sued or made the subject of an administrative investigation or hearing for a violation of such laws related to this Agreement.

14. CORRECTIVE ACTION

- A. If the County determines that a breach of contract has occurred or does not approve of the Agency's performance, it will give the Agency written notification of unacceptable performance. The Agency will then take corrective action within a reasonable period of time, as may be defined by King County in its sole discretion in its written notification to the Agency.
- B. The County may withhold any payment owed the Agency until the County is satisfied that corrective action has been taken or completed.

15. TERMINATION

- A. The County may terminate this Agreement in whole or in part, with or without cause, at any time during the Term of this Agreement, by providing the Agency ten (10) days advance written notice of the termination.
- B. If the termination results from acts or omissions of the Agency, including but not limited to misappropriation, nonperformance of required services, or fiscal mismanagement, the Agency shall return to the County immediately any funds, misappropriated or unexpended, which have been paid to the Agency by the County.
- C. Any King County obligations under this Agreement beyond the current appropriation year are conditioned upon the County Council's appropriation of sufficient funds to support such obligations. If the Council does not approve such appropriation, then this Agreement will terminate automatically at the close of the current appropriation year.

16. FUTURE SUPPORT; UTILITIES AND SERVICE

The County makes no commitment to support the services contracted for herein and assumes no obligation for future support of the activity contracted for herein except as expressly set forth in this Agreement. The Agency understands, acknowledges, and agrees that the County shall not be liable to pay for or to provide any utilities or services in connection with the construction, operation, maintenance, or use of the project contemplated herein.

17. HOLD HARMLESS AND INDEMNIFICATION

The Agency agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless King County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to any use of or occurrence on the Project that is the subject of this Agreement, or the Agency's exercise of rights and privileges granted by this Agreement, except to the extent of the County's sole negligence. The Agency's obligations under this Section shall include:

- A. The duty to promptly accept tender of defense and provide defense to the County at the Agency's own expense;

- B. Indemnification of claims made by the Agency's employees or agents; and
- C. Waiver of the Agency's immunity under the industrial insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify King County, which waiver has been mutually negotiated by the parties.

In the event it is necessary for the County to incur attorney's fees, legal expenses or other costs to enforce the provisions of this Section, all such fees, expenses and costs shall be recoverable from the Agency.

In the event it is determined that RCW 4.24.115 applies to this Agreement, the Agency agrees to protect, defend, indemnify and save the County, its officers, officials, employees and agents from any and all claims, demands, suits, penalties, losses damages judgments, or costs of any kind whatsoever for bodily injury to persons or damage to property (hereinafter "claims"), arising out of or in any way resulting from the Agency's officers, employees, agents and/or subcontractors of all tiers, acts or omissions, performance or failure to perform the rights and privileges granted under this Agreement, to the maximum extent permitted by law or as defined by RCW 4.24.115, as now enacted or hereafter amended.

A hold harmless provision to protect King County similar to this provision shall be included in all Agreements or subcontractor Agreements entered into by Agency in conjunction with this Agreement. **The Agency's duties under this Section will survive the expiration or earlier termination of this Agreement.**

18. INSURANCE

A. Liability Insurance Requirements. Notwithstanding any other provision within this Agreement, the Agency and its subcontractors shall procure and maintain coverage and limits for no less than the following:

1. Commercial General Liability. Insurance Service "occurrence" form CG 00 01 (current edition), to include Products-Completed Operations, insurance against claims for injuries to persons or damages to property that may arise from or in connection with activities under this Agreement. The insurance coverage shall be no less than One Million Dollars (\$1,000,000) combined single limit per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate.
2. Automobile Liability. *If activities require vehicle usage.* Insurance Services form number CA 00 01 (current edition), covering BUSINESS AUTO COVERAGE, Symbol 1 "any auto". If the grant includes the use of automobiles, the Limit of Liability shall be no less than One Million Dollars (\$1,000,000) per occurrence.
3. Workers Compensation/Stop Gap. *If the recipient or its contractor(s) has/have employees.* Statutory Workers Compensation coverage and Stop Gap Liability for a limit no less than One Million Dollars (\$1,000,000) per occurrence.
4. Professional Liability. *If the grant includes the use of Professional Services.* Professional Liability coverage shall be no less than One Million Dollars (\$1,000,000) per claim and in the aggregate.

B. If the grant involves the construction of a capital project or involves the purchase of equipment greater than Five Thousand (\$5,000) in value, the Agency shall provide "All Risk" Builders Risk or Property coverage for the full replacement value of the

project/property built/purchased. King County shall be listed as an additional Loss payee as our interests may appear.

- C. King County and its officers, officials, employees and agents shall be covered as additional insured on Agency's and its contractor(s') commercial general liability insurance and, if applicable, commercial auto liability insurance, with respect to liability arising out of activities performed by the Agency and its contractors. Additional Insured status shall include Products-Completed Operations.
- D. To the extent of the Agency's or its contractor's negligence, their insurance respectively shall be primary insurance with respect to the County, its officers, employees and agents. Any insurance or self-insurance maintained by the County, and its officers, officials, employees or agents shall not be subjected to contribution in favor of the Agency or its contractors insurance, and shall not benefit either in any way.

The Agency's and its contractors' insurance shall apply separately to each insured against whom a claim is made or a lawsuit is brought, subject to the limits of the insurer's liability.

- E. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after thirty (30) days' prior written notice has been given to and change in coverage accepted by King County.
- F. The insurance provider must be licensed to do business in the State of Washington and maintain a Best's rating of no less than A-VIII. Within five (5) business days of County's request, Agency must provide a Certificate of Insurance and Additional Insured Endorsement(s) (CG 20 10 11/85 or its equivalent) to the County. The Agency shall be responsible for the maintenance of their contractors' insurance documentation.
- G. If the Agency is a municipal corporation or an agency of the State of Washington and is self-insured for any of the above insurance requirements, a certification of self-insurance shall be attached hereto and be incorporated by reference and shall constitute compliance with this Section.
- H. **The Agency's duties under this Section shall survive the expiration or earlier termination of this Agreement.** The Agency understands, acknowledges and agrees that for the relevant period of public use set forth in Section 8, the Agency shall maintain insurance and name the County as an additional insured, all of which shall be consistent with the requirements of this Section.

19. ANTI-DISCRIMINATION

King County Code chapters 12.16, 12.17 through 12.18 apply to this Agreement and are incorporated by this reference as if fully set forth herein. In all hiring or employment made possible or resulting from this Agreement, there shall be no discrimination against any employee or applicant for employment because of sex, age, race, color, creed, religion, national origin, sexual orientation, gender identity or expression, marital status or the presence of any sensory, mental, or physical disability unless based upon a bona fide occupational qualification, or age except by minimum age and retirement provisions, and this requirement shall apply to but not be limited to the following: employment, advertising, lay-off, or termination, rates of pay or other forms of compensation, and selection for training, including

apprenticeship. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, religion, sexual orientation, gender identity or expression, age (except minimum age and retirement provisions), marital status, or the presence of any sensory, mental, or physical handicap. Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for cancellation, termination or suspension in whole or in part of this Agreement by King County and may result in ineligibility for further King County agreements. [Community Partner Name] shall also comply with all applicable anti-discrimination laws or requirements of any and all jurisdictions having authority.

20. CONFLICT OF INTEREST

KCC Chapter 3.04 (Employee Code of Ethics) is incorporated by reference as if fully set forth hence, and the Agency agrees to abide by all conditions of said chapter. Failure by the Agency to comply with any requirement of said KCC Chapter shall be a material breach of contract.

21. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

22. PROJECT MAINTENANCE: EQUIPMENT PURCHASE, MAINTENANCE, AND OWNERSHIP

- A. As between the County and the Agency, the Agency shall be responsible to operate and maintain the completed project at its own sole expense and risk. The Agency shall maintain the completed project in good working condition consistent with applicable standards and guidelines. The Agency understands, acknowledges, and agrees that the County is not responsible to operate or to maintain the project in any way.
- B. The Agency shall be responsible for all property purchased pursuant to this Agreement, including the proper care and maintenance of any equipment.
- C. The Agency shall establish and maintain inventory records and transaction documents (purchase requisitions, packing slips, invoices, receipts) of equipment and materials purchased with Agreement funds. **The Agency's duties under this Section shall survive the expiration of this Agreement.**

23. NOTICES

Whenever this Agreement provides for notice to be provided by one party to another, such notice shall be in writing, and directed to the person specified in Section 4 of this Agreement. Any such notice shall be deemed to have been given on the date of delivery, if mailed, on the third (3rd) business day following the date of mailing; or, if sent by fax, on the first (1st) business day following the day of delivery thereof by fax. Notice sent solely by e-mail shall be deemed to have been given on the date of transmission. Either party may change its address, fax number, email address, or the name of the person indicated as the recipient by notice to the other in the manner aforesaid.

24. ASSIGNMENT

The Agency shall not assign any portion of rights and obligations under this Agreement or transfer or assign any claim arising pursuant to this Agreement without the written consent of the County. The Agency must seek such consent in writing not less than fifteen (15) days prior to the date of any proposed assignment.

25. CONTRACT AMENDMENTS

This Agreement together with the attached exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole Agreement between the Parties. Either party may request changes to this Agreement. No modifications or amendment of this Agreement shall be valid or effective unless evidenced by an Agreement in writing signed by the Parties.

26. WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the County, which shall be attached to the original Agreement.

27. TAXES

The Agency agrees to pay on a current basis all taxes or assessments levied on its activities and property, including, without limitation, any leasehold excise tax due under RCW Chapter 82.29A; PROVIDED, however, that nothing contained herein will modify the right of the Agency to contest any such tax, and the Agency will not be deemed to be in default as long as it will, in good faith, be contesting the validity or amount of any such taxes.

28. WASHINGTON LAW CONTROLLING; WHERE ACTIONS BROUGHT

This Agreement is made in and will be in accordance with the laws of the State of Washington, which will be controlling in any dispute that arises hereunder. Actions pertaining to this Agreement will be brought in King County Superior Court, King County, Washington.

29. PARAGRAPH HEADINGS

The paragraph headings contained herein are only for convenience and reference and are not intended to be a part of this Agreement or in any manner to define, limit, or describe the scope or intent of this Agreement or the particular paragraphs to which they refer.

30. PUBLIC DOCUMENT

This Agreement will be considered a public document and will be available for inspection and copying by the public.

31. LEGAL RELATIONS

Nothing contained herein will make, or be deemed to make, the County and the Agency a partner of one another, and this Agreement will not be construed as creating a partnership or

joint venture. Nothing in this Agreement will create, or be deemed to create, any right, duty or obligation in any person or entity not a party to it.

32. **SINGULAR AND PLURAL**

Wherever the context will so require, the singular will include the plural and plural will include the singular.

33. **PERMITS AND LICENSES**

The Agency shall design, develop and construct the Project in accordance with all applicable laws and regulatory requirements including environmental considerations, permitting determinations, and other legal requirements. All activities and improvements shall be performed by Agency at its sole expense and liability. The Agency shall, at its sole cost and expense, apply for, obtain and comply with all necessary permits, licenses and approvals required for the Project,

34. **INTERPRETATION OF COUNTY RULES AND REGULATIONS**

If there is any question regarding the interpretation of any County rule or regulation, the County decision will govern and will be binding upon the Agency.

35. **POLICE POWERS OF THE COUNTY**

Nothing contained in this Agreement will diminish, or be deemed to diminish, the governmental or police powers of the County.

36. **ENTIRE AGREEMENT**

This Agreement, including its attachments, constitutes the entire Agreement between the County and the Agency. It supersedes all other agreements and understandings between them, whether written, oral or otherwise.

KING COUNTY

AGENCY: North Bend

FOR

King County Executive

Signature

Date

NAME (Please type or print), Title

Date